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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,569	08/20/2001	Thomas Wild	9793/97	5757

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EXAMINER
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DAVIS, DEBORAH A

ART UNIT	PAPER NUMBER
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1641

DATE MAILED: 09/17/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/933,569

Applicant(s)

WILD ET AL.

Examiner

Deborah A Davis

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See continuation

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 11-15, 17-19, 21-23, 25 and 26.

Claim(s) withdrawn from consideration: 27-32.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
LONG V. LE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

Continuation of 2. NOTE: The amendment to claim 21 depend from a cancelled claims 20 which would raise new 112, second issues. Further the inclusion of the second hapten or hapten-like molecule selected from the group consisting of, would require a new search.

With respect to cancelled claims 13 and 20 being incorporated into the independent claims 11 and 19, remain rejected for the same reason set forth in the previous office action. Applicant argument that there is no motivation to combine the Hevey et al reference with the Huber et al reference is not found persuasive. Applicant argues that there is no suggestion or motivation for cobining the homogeneous system of Huber et al with the heterogeneous sandwich assay disclosed in Hevey et al is not found persuasive because the recitation of "homogeneous binding assay" is in the preamble of claims 11 and 19, leaving the body of the claims to meet the limitation of a homogenous or heterogeneous assay method. Further Huber et al teaches embodiments that can be used in a homogeneous and heterogeneous assay methods (see Huber et al, col. 1, lines 1-34). Applicant's argument that the statement made by Examiner: "identical haptens or its analogs have same or similar molecular weights or biological structure and contains the same or similar binding properties" finds not support in the references and does not provide any connection to the disclosures of either of the references or to their combination is not found persuasive. This statement was made with the mere observation of what it would suggest to one of ordinary skill in the art that one would be motivated to use identical haptens because they contain or possess similar or the same functional characteristics. Further, the cited reference of Huber et al also taught identical haptens in an assay method (see claims 6 of Huber et al), therefore, the utility or use of the identical haptens was taught or suggested by the prior art. Applicant's argument that the Examiner is not consistent with the specification on page 4, line 21 that defines haptens as small molecules which clearly excludes substances such as enzymes are not found persuasive because in applicant's specification on page 4, lines 27-30 define haptens to include enzymes. Applicant's argutment that the references do not teach or suggest an assay component comprising a gbinding partner is not found persuasive for the same reasons set forth in previous office action. Applicant's argument that the Hevey et al reference does not teach 1<sup>st</sup> and 2<sup>nd</sup> haptens or hapten like molecules is not quite accurate. The Examiner asserted that the reference of Hevey et al does not teach that 1<sup>st</sup> and 2<sup>nd</sup> hapten or hapten-like molecules is identical to or an analogue of the first hapten or hapten-like molecule. This argument is not found persuasive for reasons set forth in the previous office action. Applicant's argument that Huber et al does not teach a 2<sup>nd</sup> hapten or hapten-like molecule tht is identical to a 1<sup>st</sup> hapten or hapten-like molecule, where both of these haptens are present as assay ingredients in an assay to determine an analyte is not found persuasive for reasons set forth in the previous office action. Therefore, as for reasons mentioned above, and the rejection set forth in the previous office action, this rejection is maintained and final.